



FEDERAL ELECTION COMMISSION

WASHINGTON, D C. 20463

APR 17 2006

Mr. Jack Orchulli

[REDACTED]
Darien, CT 06820-3031

RE: MUR 5728
Friends of Jack Ochulli and Jack Orchulli, in
his official capacity as treasurer
Jack Orchulli

Dear Mr. Orchulli:

On April 6, 2006, the Federal Election Commission found that there is reason to believe that Friends of Jack Orchulli and you, in your official capacity as treasurer ("Committee"), violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. §§ 400.21(a) and 400.22(a), regulations promulgated pursuant to the Act. These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). A Factual and Legal Analysis for the Committee, which more fully explains the Commission's findings, is attached for your information.

In addition, on April 6, 2006, the Federal Election Commission found that there is reason to believe that you, as a candidate for United States Senate from Connecticut in 2004, also violated 2 U.S.C. § 434(a)(6)(B)(iii) and (iv), provisions of the Act. These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). A Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You and the Committee may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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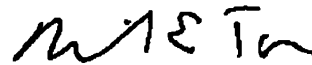
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you and the Committee intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed forms stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis for the Committee
Factual and Legal Analysis for Jack Orchulli
Procedures
Designation of Counsel Forms



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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Jack Orchulli and
Jack Orchulli, in his official
capacity as treasurer

MUR: 5728

I. INTRODUCTION

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. This matter concerns reporting requirements arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of certain thresholds. For the reasons set forth below, the Commission finds reason to believe that the Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer ("Committee"), violated 2 U.S.C. § 434(a)(6)(B)(iii), 2 U.S.C. § 434(a)(6)(B)(iv), 11 C.F.R. § 400.21(a) and 11 C.F.R. § 400.22(a).

II. FACTUAL SUMMARY

In January 2004, Jack Orchulli filed an FEC Form 2, Statement of Candidacy, in connection with his candidacy for United States Senate from Connecticut. On this form, Mr. Orchulli indicated that he intended to spend \$500,000 above the threshold amount in the general election from his personal funds.¹

¹ There was no Republican primary for U.S. Senate in Connecticut in 2004. In that state, a political party endorses a party candidate at its party convention. The Republican convention was held on May 8, 2004 and Jack Orchulli was endorsed as the party nominee. A primary election is only held if a qualified challenger to the party-endorsed candidate receives 15% of the delegate votes during the party convention and files for a primary or, if after the convention, a challenger files the required number of petitions to qualify for access to a primary ballot. Otherwise, the party-endorsed candidate is the party nominee.

Between May 14, 2004 and October 11, 2004, Mr. Orchulli made a total of \$1,040,000 in loans to the Committee that were all designated for the general election. *See Chart, infra.*

These loans were all reported on the appropriate quarterly disclosure reports.

Mr. Orchulli made loans to the Committee of \$30,000 each on May 14, 2004, June 4, 2004 and June 16, 2004, respectively. On June 23, 2004, he loaned an additional \$450,000 to the Committee, bringing his personal loan total to \$540,000, and triggering and exceeding the reporting threshold requirement of \$511,840, which required the filing of a 24 Hour Notice of Expenditure from Candidate's Personal Funds ("FEC Form 10"). Thereafter, Mr. Orchulli loaned the Committee \$250,000 on September 13, 2004, \$100,000 on September 16, and \$150,000 on October 11, 2004. Neither Mr. Orchulli nor the Committee timely filed an initial or additional FEC Form 10's disclosing these expenditures from personal funds.

On October 7, 2004, RAD sent a Request for Additional Information ("RFAP") to the Committee requesting an explanation for the absence of the initial FEC Form 10 in connection with the candidate's expenditure of personal funds in the form of loans totaling \$540,000 as of June 23, 2004. On October 22, 2004, the Committee filed an FEC Form 10 regarding this expenditure. On October 22, 2004, the Committee also filed an FEC Form 10 for each of the two candidate loans made in September 2004 and for the October 11, 2004 candidate loan.²

² In a cover letter accompanying each of the notification forms, the Committee states that it faxed a copy of the FEC Form 10 to the Secretary of the Senate and to each of Mr. Orchulli's opponents. Thus, it appears that the Secretary of the Senate and Mr. Orchulli's three opponents did not receive any FEC Form 10's until October 22, 2004.

The following chart outlines loans from personal funds made by Mr. Orchulli to the Committee for the general election upon which the FEC Form 10's were filed untimely:

Date	Amount	Loan	Total
May 14, 2004	\$30,000	Loan	\$30,000
June 4, 2004*	\$30,000	Loan	\$60,000
June 16, 2004	\$30,000	Loan	\$90,000
June 23, 2004	\$450,000	Loan	\$540,000
September 13, 2004	\$250,000	Loan	\$790,000
September 16, 2004	\$100,000	Loan	\$890,000
October 11, 2004	\$150,000	Loan	\$1,040,000

* On the 2004 July Quarterly Report, the Committee reported this loan as having been received on June 4, 2004. On the FEC Form 10 filed on October 22, 2004, the Committee reported this loan as having been received on June 6, 2004.

III. LEGAL ANALYSIS

A Senate candidate or his or her principal campaign committee must notify the Secretary of the Senate, the Commission and each opposing candidate when the candidate makes an expenditure³ from personal funds exceeding two times the threshold amount.⁴ 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of the time such expenditure is made. *Id.* For each additional expenditure of \$10,000 or more, the candidate is required to notify the Secretary of the Senate, the Commission and each opposing candidate in an FEC Form 10 filing within 24 hours of the time such expenditure is made, and must include, among other things, the date and the amount of the expenditure and the total

³ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by the candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. See 2 U.S.C. § 434(a)(6)(B)(i); 11 C.F.R. § 400.4.

⁴ The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by 4 cents. See 11 C.F.R. § 400.9. In the case of Connecticut in 2004, the threshold amount was \$255,920 (\$150,000 + (2,648,000 x .04)). Thus, an amount that is two times the threshold amount is \$511,840 (\$255,920 x 2).

amount expended as of the date of the filing.⁵ See 2 U.S.C. §§ 434(a)(6)(B)(iv) and (v); 11 C.F.R. § 400.22(a).

Mr. Orchulli's \$450,000 loan on June 23, 2004 caused his total personal expenditures for the general election to exceed \$511,840. By exceeding this amount, the Committee and the candidate were required to file an FEC Form 10 with the Commission and send copies to the Secretary of the Senate and to the candidate's opponents within 24 hours of making the expenditure, or by June 24, 2004. The Committee did not file the initial FEC Form 10 until October 22, 2004, 120 days late. Therefore, there is reason to believe that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a).

In addition, the Committee failed to timely file additional FEC Form 10's regarding Mr. Orchulli's loans on September 13, 2004, September 16, 2004 and October 11, 2004, each of which was in excess of \$10,000. The Committee filed the FEC Form 10's for these loans on October 22, 2004, 38 days, 35 days and 10 days late, respectively. Therefore, there is reason to believe that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a).

⁵ A candidate's personal expenditures could entitle his opponents to an increase of three times or six times the contribution limit under 2 U.S.C. § 441a(a)(1)(A), depending upon whether the candidate's expenditure of personal funds is more than twice the threshold amount, but not over four times the threshold amount, or more than four times the threshold amount. See 2 U.S.C. § 441a(i)(1)(C); 11 C.F.R. § 400.40. In addition, if the candidate's expenditure of personal funds is more than 10 times the threshold amount, his opponent could be entitled to a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *Id.* The opposition personal funds amount is distinct from the threshold reporting amount because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a(i)(1)(D); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. See 2 U.S.C. § 441a(i)(1)(E)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. See 11 C.F.R. § 400.10.

FEDERAL ELECTION COMMISSION

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RESPONDENT: Jack Orchulli

MUR: 5728

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II. FACTUAL SUMMARY

In January 2004, Jack Orchulli filed an FEC Form 2, Statement of Candidacy, in connection with his candidacy for United States Senate from Connecticut. On this form, Mr. Orchulli indicated that he intended to spend \$500,000 above the threshold amount in the general election from his personal funds.¹

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* On the 2004 July Quarterly Report, the Committee reported this loan as having been received on June 4, 2004. On the FEC Form 10 filed on October 22, 2004, the Committee reported this loan as having been received on June 6, 2004.

III. LEGAL ANALYSIS

A Senate candidate or his or her principal campaign committee must notify the Secretary of the Senate, the Commission and each opposing candidate when the candidate makes an expenditure³ from personal funds exceeding two times the threshold amount.⁴ 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of the time such expenditure is made. *Id.* For each additional expenditure of \$10,000 or more, the candidate is required to notify the Secretary of the Senate, the Commission and each opposing candidate in an FEC Form 10 filing within 24 hours of the time such expenditure is made, and must include, among other things, the date and the amount of the expenditure and the total

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amount expended as of the date of the filing.⁵ See 2 U.S.C. §§ 434(a)(6)(B)(iv) and (v); 11 C.F.R. § 400.22(a). Although an FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner. See 11 C.F.R. § 400.25.

Mr. Orchulli's \$450,000 loan on June 23, 2004 caused his total personal expenditures for the general election to exceed \$511,840. By exceeding this amount, the Committee and Mr. Orchulli were required to file an FEC Form 10 with the Commission and send copies to the Secretary of the Senate and to the candidate's opponents within 24 hours of making the expenditure, or by June 24, 2004. The Committee did not file the initial FEC Form 10 until October 22, 2004, 120 days late. The Act places a requirement on the candidate to ensure that the appropriate filings are made in a timely manner with respect to expenditures from personal funds. Therefore, there is reason to believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iii).

In addition, the Committee and Mr. Orchulli failed to timely file additional FEC Form 10's regarding Mr. Orchulli's loans on September 13, 2004, September 16, 2004 and October 11, 2004, each of which was in excess of \$10,000. The Committee filed the FEC Form 10's for these loans on October 22, 2004, 38 days, 35 days and 10 days late, respectively. Therefore, there is reason to believe that Jack Orchulli violated 2 U.S.C. § 434(a)(6)(B)(iv).

⁵ A candidate's personal expenditures could entitle his opponents to an increase of three times or six times the contribution limit under 2 U.S.C. § 441a(a)(1)(A), depending upon whether the candidate's expenditure of personal funds is more than twice the threshold amount, but not over four times the threshold amount, or more than four times the threshold amount. See 2 U.S.C. § 441a(i)(1)(C); 11 C.F.R. § 400.40. In addition, if the candidate's expenditure of personal funds is more than 10 times the threshold amount, his opponent could be entitled to a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *Id.* The opposition personal funds amount is distinct from the threshold reporting amount because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a(i)(1)(D); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. See 2 U.S.C. § 441a(i)(1)(E)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. See 11 C.F.R. § 400.10.